IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

WP(C).No. 24688 of 2006(L)

PETITIONER:

SHERLY FRANCIS, PROPRIETOR,
STARLINE PRODUCTS, MARKET ROAD,
TRIPUNITHURA, ERNAKULAM DISTRICT.

BY ADV. SRI.P.M.POULOSE

RESPONDENTS:
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1. CHIEF ENGINEER (HRD & GI),
JALA BHAVAN, KERALA WATER AUTHORITY,
THIRUVANANTHAPURAM.

2. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE,
ERNAKULAM.

3. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, INDUSTRIES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.M.DINESH, SC, KWA
R2 AND R3 GOVERNMENT PLEADER SMT. SMITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/01/2007, ALONG WITH WPC 31324 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 24688/06)

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE RELEVANT PAGE OF THE PERMANENT SSI REGISTRATION.

EXT.P2 TRUE COPY OF THE TENDER SCHEDULE NOTIFIED BY THE FIRST RESPONDENT.

EXT.P3 TRUE COPY OF THE GOVERNMENT ORDER GO (MS) NO. 4/74/SPD DATED 3.8.1974

EXT.P4 TRUE COPY OF THE RELEVANT PAGE OF THE SAID GENERAL CONDITIONS OF CONTRACT ISSUED TO THE PETITIONER.

EXT.P5 TRUE COPY OF THE CERTIFICATE NO. A8-1510/2005/LDIS DATED 14.3.2005

EXT.P6 TRUE COPY OF THE LETTER NO. KWA/HO/SP-7475/1995/LIME/STARLINE DATED 25.2.2006

EXT.P7 TRUE COPY OF THE SAID APPLICATION DATED 28.2.2006

EXT.P8 TRUE COPY OF LETTER SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT DATED .. MARCH 2006

EXT.P9 TRUE COPY OF THE REVISED GOVERNMENT ORDER GO (P) NO. 448/2005/FIN DATED 13.10.2005

EXT.P10 TRUE COPY OF THE LETTER DATED 5.5.2006 SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT.

EXT.P11 TRUE COPY OF THE LETTER DATED 7.7.2006 SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT.

EXT.P12 TRUE COPY OF THE ORDER DATED 1.9.2006 ISSUED BY THE FIRST RESPONDENT.

EXT.P13 COPY OF MALAYALA MANORAMA DATED 19.10.2006

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C.NO. 24688 & 31324 OF 2006

Dated this the 30th day of January, 2007

JUDGMENT

Both the Writ Petitions filed by the same petitioner pertain to the same matter, that is submission of tenders for supply of lime to Water Authority, and consequent failure to supply which led to impugned proceedings blacklisting the petitioner. It is admitted that tenders were called for supply of lime and last date for submission of tenders was 22.3.2005. Petitioner submitted quotation under the name of two firms on the same date. Even though tenders were opened on the same date, and petitioner was found to be eligible for award of supply contract, for reasons best known to the Water Authority, orders were issued only on 25.3.2006, that is well over a year from the date of opening of tender. When tenders were invited petitioner as SSI unit was eligible for exemption from EMD. However, vide Ext.P8, Government cancelled the exemption notification on 13.10.2005 which led to the requirement of deposit of earnest money by the petitioner. Petitioner's case is that besides the additional burden of earnest money deposit, the price

offered had also lost it's relevance because purchase order was placed after one year of submission and opening of tender. I do not find any justification for the Water Authority to delay in issuing purchase order in respect of tender opened on 22.3.2005. The delay of one year is inordinate and on account of fluctuation in price, the supplier is entitled to back out of the contract, more so when the period of supply was not mentioned in the tender conditions. If contract was signed within a reasonable time, from the date of opening of tender, there was no necessity for the petitioner to deposit EMD. In the circumstances, petitioner was justified in backing out of the tender, the reason for which is attributable to the Water Authority. In the circumstances, blacklisting of the petitioner is not justified. Accordingly, Ext.P12 in WPC 24688 and Ext.P13 in WPC 31324 of 2006 are quashed.

WPCs are allowed.

(C.N.RAMACHANDRAN NAIR)
Judge